

**State of California
Office of Administrative Law**

In re:

Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3571, 3582, 3590, 3590.1,
3590.2, 3590.3

Amend sections: 3000

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3

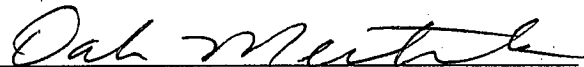
OAL File No. 2011-0526-02 EON

This emergency adoption of regulations as an operational necessity establishes rules regarding the residence restrictions for paroled sex offenders. Specifically, this rulemaking adds necessary definitions of terms, establishes residence restrictions for sex offenders and high risk sex offenders and corresponding parole agent supervision and verification duties, and also establishes certain exceptions which enable sex offenders to enter at certain addresses without being considered to have established a residence at any such address.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 6/15/2011 and will expire on 11/23/2011. The Certificate of Compliance for this action is due no later than 11/22/2011.

Date: 6/15/2011



Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Matthew Cate

Copy: Josh Jugum

STD. 400 (REV. 01-09)

OAL FILE
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2011-0526-02 EON

For use by Office of Administrative Law (OAL) only

2011 MAY 26 PM 2:46
OFFICE OF
ADMINISTRATIVE LAWENDORSED FILED
IN THE OFFICE OF

2011 JUN 15 PM 1:16

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

11-0023

I. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

II. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

a. SUBJECT OF REGULATION(S) Residence Restrictions on Paroled Sex Offenders		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
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SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	3571, 3582, 3590, 3590.1, 3590.2, 3590.3
	AMEND	3000
	REPEAL	
TITLE(S) 5.		

TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity PC 5058.3</u>	

ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)


<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

CONTACT PERSON Josh Jugum	TELEPHONE NUMBER 916 445-2228	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 5-25-11
TYPED NAME AND TITLE OF SIGNATORY SCOTT KERNAN, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 15 2011

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates new text.

Title 15, Division 3, Chapter 1.

Article 1. Behavior

3000. Definitions.

Section 3000 is amended to add the definitions below and merge them alphabetically with existing definitions in this section.

*

*

Released on Parole means released from custody to a term of parole supervision and includes: initial releases from custody; parolees released after having served a period of parole revocation; parole violators with a new term; parolees released from any other jurisdiction, for example, federal custody; and offenders ordered directly to parole by a sentencing court, also referred to as "court walkovers."

*

*

Residential Facility means a property that is operated for the purpose of providing lodging and services for two or more persons. Residential facilities include sober living facilities and transitional housing facilities that provide services such as money management, substance abuse prevention, relationship and self-esteem workshops, skills for employment stability, job training, and referrals to local community, social, and health services.

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Single Family Dwelling means a real property improvement, such as a house, apartment, or mobile home that is used or is intended for use as a dwelling for one family.

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*

Transient Sex Offender means a parolee who has a statutory requirement to register as a sex offender and who has no residence.

Note: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3550, 4570, 5009, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and Madrid v. Cate (U.S.D.C. N.D. Cal. C90-3094 TEH).

This text adopts new Section 3571 and subsections (a) through (f).

Under Subchapter 6, Adult Parole, reserved Article 5, Sex Offenders, is adopted.

Article 5. Sex Offenders ~~{Reserved}~~

Under Article 5, reserved Section 3571 heading is amended and adopted and new text is adopted to read:

3571. Sex Offender Residence Restrictions. ~~{Reserved}~~

Parolees who are required to register as sex offenders pursuant to Penal Code (PC) sections 290 through 290.023, inclusive, are subject to residence restrictions as specified in this section.

(a) Definitions. For the purposes of this section, the following terms are defined:

(1) Park means an outdoor public area maintained for recreational purposes.

(2) Regularly means occurring on a consistent basis.

(3) Gather means to congregate or come together with one another.

(4) Park where children regularly gather means a park, as described in section 3571(a)(1), where persons under the age of 18 consistently congregate or come together with one another either with or without parental or guardian supervision.

(5) Public Area means an area that any governmental entity owns, operates, leases, rents, or otherwise legally controls as if owned by the governmental entity. "Governmental entity," for the purposes of this section, includes, but is not limited to: the United States, any state, any county, any city, any special district, or any subdivision thereof.

(b) A person released on parole who is required to register pursuant to PC Sections 290 through 290.023, inclusive, may not, during the period of parole, reside in any single family dwelling with any other person also required to register as a sex offender, unless those persons are legally related by blood, marriage, or adoption.

(1) A residential facility located within a single family dwelling which serves six or fewer persons shall be excluded from this restriction.

(c) A person released on parole on or after November 8, 2006, who is required to register pursuant to PC sections 290 through 290.023, inclusive, shall not reside within 2,000 feet of any public or private school, kindergarten through 12th grade, or park where children regularly gather.

(d) A person released on parole on or before November 7, 2006, who is required to register pursuant to PC sections 290 through 290.023, inclusive, shall not be subject to a residence restriction in addition to subsection (b) above, or required by section 3582, unless that residence restriction is supported by circumstances found in the parolee's criminal history.

(e) Residence Verification and Approval. The Division of Adult Parole Operations (DAPO) shall monitor compliance with the residence restrictions contained in this section.

(1) Parolees subject to residence restrictions are responsible for finding compliant housing.

(2) During the initial interview between the parolee and the parole agent upon release from custody, and before any change of residence while under parole supervision, the parolee shall provide his or her parole agent with the address where he or she intends to reside upon verification and approval of the parole agent.

(3) The parole agent shall utilize available resources to identify any public or private schools, and parks where children regularly gather, located approximately within 2,000 feet of the parolee's proposed residence. Available resources that may be considered include, but are not limited to:

(A) The California Department of Education's website which lists public, private and charter (a category of public) schools.

(B) Telephone directories (white and yellow pages) which list public schools by district, including city and/or county public school directories.

(C) Listings provided by city halls that include local schools and parks.

(D) Resources available on the internet, such as satellite maps.

(E) Observations from site visits or familiarity with the community.

(4) If any public or private school, or park where children regularly gather, is identified approximately within 2,000 feet of the parolee's proposed residence, the parole agent shall use a Global Positioning System (GPS) handheld device to determine whether any boundary of the public or private school, or park where children regularly gather, is within 2,000 feet of the threshold of the primary entrance of the proposed residence "as the crow flies," as a direct point-to-point aerial transit path, not as a street or path route.

(5) Parolees shall be advised whether the proposed residence is compliant. If the residence is noncompliant based on the GPS verification, the actual distance and name of the prohibited public or private school, or park where children regularly gather, and method of measurement shall be disclosed to the parolee upon his or her request.

(f) DAPO shall report to the Board of Parole Hearings any parolee who is reasonably believed to have violated a residence restriction contained in this section.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 3003.5, 3053(a), and 5054, Penal Code, *Doe v. Schwarzenegger* (2007) 476 F.Supp.2d. 1178; *In re E.J.* (2010) 47 Cal.4th 1258. *People v. Lent* (1975) 15 Cal.3d 481, *People v. Dominguez* (1967) 256 Cal.App.2d 623.

This text adopts new Section 3582 and subsections (a) through (g).

Article 6. High Risk Sex Offenders {Reserved}

Reserved Section 3582 is adopted to read:

3582. High Risk Sex Offender Residence Restrictions {Reserved}

Parolees who are required to register as sex offenders pursuant to Penal Code (PC) sections 290 through 290.023, inclusive, and who have been designated as high risk sex offenders by the California Department of Corrections and Rehabilitation (CDCR), are subject to residence restrictions as specified in this section.

(a) Definition. High risk sex offender means a sex offender who, pursuant to PC section 290.04, has been assessed and deemed by the CDCR to pose a high risk to commit a new sex offense.

(b) A high risk sex offender released on parole who is required to register pursuant to PC sections 290 through 290.023, inclusive, may not, during the period of parole, reside in any single family dwelling with any other person also required to register as a sex offender, unless those persons are legally related by blood, marriage, or adoption.

(1) A residential facility located within a single family dwelling which serves six or fewer persons shall be excluded from this restriction.

(c) A high risk sex offender released on parole on or after November 8, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who has a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, may not reside within one-half mile of any public or private school, kindergarten through grade 12, inclusive, and may not reside within 2,000 feet of a park where children regularly gather, as described in section 3571(c).

(1) A high risk sex offender released on parole on or after November 8, 2006 who does not have a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, shall be subject to the residency restriction described in section 3571(c). Any restriction on this parolee's residence in addition to this subsection and subsection (b) above is allowed only if that residence restriction is supported by circumstances found in the parolee's criminal history.

(d) A high risk sex offender released on parole on or before November 7, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who has a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, may not reside within one-half mile of any public or private school, kindergarten through grade 12, inclusive.

(1) A high risk sex offender released on parole on or before November 7, 2006 who is required to register pursuant to PC sections 290 through 290.023, inclusive, and who does not have a current or prior conviction for a violation of PC section 288, inclusive of any subsection, or PC section 288.5, shall not be subject to a residence restriction in addition to subsection (b) above unless that residence restriction is supported by circumstances found in the parolee's criminal history.

(e) Residence Verification and Approval. The Division of Adult Parole Operations (DAPO) shall monitor compliance with the residence restrictions contained in this section.

(1) Parolees subject to residence restrictions are responsible for finding compliant housing.

(2) During the initial interview between the parolee and the parole agent upon release from custody, and before any change of residence while under parole supervision, the parolee shall provide his or her parole agent with the address where he or she intends to reside upon verification and approval of the parole agent.

(3) In addition to the residence verification and approval process described in section 3571(e) to determine whether the parolee's proposed residence is located within 2,000 feet of a public or private school or park where children regularly gather, the parole agent shall utilize available resources to identify any public or private schools located approximately within one-half mile of the parolee's proposed residence. Available resources that may be considered include, but are not limited to:

(A) The California Department of Education's website which lists public, private and charter (a category of public) schools.

(B) Telephone directories (white and yellow pages) which list public schools by district, including city and/or county public school directories.

(C) Listings provided by city halls that include local schools.

(D) Resources available on the internet, such as satellite maps.

(E) Observations from site visits or familiarity with the community.

(4) If any public or private school is identified approximately within one-half mile of the parolee's proposed residence, the parole agent shall use a Global Positioning System (GPS) handheld device to determine whether any boundary of the public or private school is within one-half mile of the threshold of the primary entrance of the proposed residence "as the crow flies," as a direct point-to-point aerial transit path, not as a street or path route.

(5) Parolees shall be advised whether the proposed residence is compliant. If the residence is noncompliant based on the GPS verification, the actual distance and name of the prohibited public or private school and method of measurement shall be disclosed to the parolee upon his or her request.

(f) DAPO shall report to the Board of Parole Hearings any parolee who is reasonably believed to have violated a residence restriction contained in this section.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 3003(g), 3003.5, 3053(a), and 5054, Penal Code, *Doe v. Schwarzenegger* (2007) 476 F.Supp.2d. 1178; *In re E.J.* (2010) 47 Cal.4th 1258.), *People v. Lent* (1975) 15 Cal.3d 481.

New text adopts new Section 3590 through Section 3590.3.

Subchapter 6. Adult Parole

New Article 6.5 is adopted to read:

Article 6.5. Transient Sex Offender Supervision

Under Article 6.5, new Sections 3590, 3590.1, 3590.2, and 3590.3 are adopted to read:

3590. Transient and Residence Determination.

(a) To establish a residence pursuant to Penal Code (PC) section 290.011, a parolee must regularly reside at a location or locations. The complete set of circumstances will be considered to determine whether a

parolee has established a residence or whether the parolee is a transient sex offender as defined in section 3000. For the purposes of this section, a parolee who spends one day or one night in a shelter or structure that can be located by a street address, including but not limited to houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles, may be determined to have established a residence if other circumstances are present. These circumstances include, but are not limited to:

(1) The parolee resides one day or night at the same address every week, for multiple consecutive weeks, thus establishing a pattern of residency.

(2) The parolee resides two or more consecutive days or nights at the same address, or two or more days or nights at the same address in a period that would appear to establish a pattern of residency.

(3) The parolee is in possession of a key to an address where he or she is located and there is evidence of a pattern of residency.

(4) Upon contacting the parolee at an address where he or she is located or has been residing, evidence exists that he or she has established residency. Evidence would include, but is not limited to, clothing in a closet or drawer, toiletries in a bathroom, or information from occupants and/or neighbors. Such evidence may establish a pattern of residency.

(b) When determining whether a residence has been established, the parole agent shall utilize all available resources and information. If the review of the complete set of circumstances indicates residency has been established, and a reasonable and prudent parole agent reviewing the same information would draw the same conclusion, then a residence has been established. After a transient sex offender establishes a residence, he or she is no longer recognized as transient, and:

(1) Continues to have a lifetime obligation to register as a sex offender, but is subject to the registration requirements as provided under PC section 290.010.

(2) May be subject to one or more residency restrictions as described in sections 3571 and 3582.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Sections 290.010, 290.011(g), 3003(g), 3003.5(b) and 5054, Penal Code.

3590.1. Approved Regular Entrance at an Address.

(a) Transient sex offenders are permitted the following repeated and regular entries at an address and such entries shall not be considered as establishing residency:

(1) For the purpose of charging the Global Positioning System (GPS) device paroled sex offenders are required to wear as described in section 3561.

(2) For the purpose of approved employment.

(3) For the purpose of conducting legitimate business in a licensed business, professional, or government building.

(4) For the purpose of obtaining care, treatment or other services provided by licensed providers.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Section 5054, Penal Code.

3590.2. Transient Sex Offender Location Restrictions.

(a) Transient sex offenders staying at locations without street addresses, including but not limited to bridges, transient encampments, and bus stops, which may be near schools, parks, or areas where children regularly gather as described in section 3571(a), are not subject to residence restrictions established in statute, as these locations are not defined as residences that are located by a street address as provided in section 3590.

(b) The locations described in subsection 3590.2(a) may not be acceptable for a parolee to reside at or to frequent based upon his or her existing special conditions of parole, criminal history, and/or local community ordinances. Special conditions of parole may be imposed when warranted to address these circumstances.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Section 3003(g), 3003.5(b), 3053(a), and 5054, Penal Code. *People v. Lent* (1975) 15 Cal.3d 481.

3590.3. Supervision of Transient Sex Offenders.

(a) Transient sex offenders are subject to parole supervision contact requirements as described in section 3504, with the following exception:

(1) Instead of completing the required face-to-face residence contact, the parole agent shall contact the parolee at either his or her place of employment (if employed) or "in the field," within the community where the parolee is located. This may include a residence where the parolee appears to be residing. All contacts shall be documented by the parole agent on a CDCR Form 1650-D (Rev. 07/10), Record of Supervision, which is incorporated by reference.

(2) Transient sex offenders shall be required to disclose the locations where they have slept, or intend to sleep at night, during any contact with the parole agent.

(b) During case reviews, the parole unit supervisor shall ensure that the parole agent is meeting current contact case supervision specifications as described in section 3504.

NOTE: Authority cited: Section 5058 and 5058.3, Penal Code. Reference: Section 3003, 3003.5, and 5054, Penal Code.

1A ACCOMMODATION CODES:
Spoke Slowly/Simple English; 2=Interpretive Services; 3=Hearing Amplification; 4=Written Notes; 5=ASL/American Sign Language; 6=Vision Assistance;
TDD Services.

[illegible]

ADA ACCOMMODATION CODES:
1=Spoke Slowly/Simple English; 2=Interpretive Services; 3=Hearing Amplification; 4=Written Notes; 5=ASL/American Sign Language; 6=Vision Assistance;
7=TDD Services.